

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-7567

JAMES WILLIAM BERRY, SR.,

Plaintiff - Appellant,

versus

THOMAS MCBRIDE, Warden, "Newly Appointed";
JAMES RUBENSTEIN, Commissioner of Corrections;
MICHAEL COLEMAN, Deputy Warden; BETTY SLAYTON,
Magistrate of M.O.C.C.; CARL SHELLINGS, Unit
Manager; WILLIAM KINCAID, Unit Manager;
PETRISHA HENDSHEW, Postal Sup.; BRIAN STUMP,
Correctional Officer; CORRECTIONAL MEDICAL
SERVICES,

Defendants - Appellees.

Appeal from the United States District Court for the Southern
District of West Virginia, at Beckley. David A. Faber, Chief
District Judge. (CA-02-856)

Submitted: January 29, 2004

Decided: February 6, 2004

Before WILKINSON, MICHAEL, and KING, Circuit Judges.

Affirmed in part; dismissed in part by unpublished per curiam
opinion.

James William Berry, Sr., Appellant Pro Se. Charles Patrick
Houdyschell, Jr., WEST VIRGINIA DIVISION OF CORRECTIONS,
Charleston, West Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

James W. Berry, Sr., seeks to appeal from the district court's order adopting the magistrate judge's recommendation and (1) denying Berry's motion for a temporary restraining order or a preliminary injunction, (2) granting the motion to dismiss filed by Correctional Medical Services, and (3) granting in part the remaining Defendants' motion to dismiss. The district court denied the motion to dismiss this 42 U.S.C. § 1983 (2000) action as to Berry's discrimination, retaliation, and Eighth Amendment claims. We affirm in part and dismiss in part.

This court may exercise jurisdiction only over final orders, 28 U.S.C. § 1291 (2000), and certain interlocutory and collateral orders, 28 U.S.C. § 1292 (2000). Fed. R. Civ. P. 54(b); Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541 (1949). Except to the extent that Berry appeals from the denial of his motion for a preliminary injunction, the order Berry seeks to appeal is neither a final order nor an appealable interlocutory or collateral order. Accordingly, we dismiss this portion of the appeal for lack of jurisdiction.

With respect to the appeal from the district court's denial of Berry's motion for a preliminary injunction, we have reviewed the record and find no reversible error. Accordingly, we affirm this portion of the appeal for the reasons stated by the district court. See Berry v. McBride, No. CA-02-856 (S.D.W. Va. Sept. 25, 2003). We dispense with oral argument because the facts

and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED IN PART;
DISMISSED IN PART